IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. CRM-M-52902-2023
2023: PHHC: 163131

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ASHOK SUKHIJA

. . . . Petitioner

Vs.

STATE OF HARYANA

. . . . Respondent

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2. CRM-M-56316-2023
***2023: PHHC:* 163132**

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MAHESH KUMAR @ MAHESH BANSAL

. . . . Petitioner

Vs.

STATE OF HARYANA

. . . . Respondent

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Reserved on:12.12.2023
Pronounced on: 19.12.2023

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Harpreet S. Rakhra, Advocate,
for the petitioner (in CRM-M-52902-2023)

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Mr. Kanishk Sarup, Advocates,
for the petitioner (in CRM-M-56316-2023)

Mr. Sumit Jain, Addl. A.G., Haryana.

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DEEPAK GUPTA, J.

By way of above titled two petitions, both filed under Section 439 CrPC, petitioners pray for grant for their release on regular bail in case FIR No.657 dated 24.10.2020, registered at Police Station City Sirsa, under Sections 406/409/419/420/465/467/468/471/120B IPC.

2. (i) FIR is based on a complaint dated 11.12.2019, made by Excise and Taxation Commissioner, Ward No.5, Sirsa to the Superintendent of Police Sirsa, informing that a firm by the name of M/s. J.C. Enterprises (proprietor Sh. Madan Lal) was found involved in claiming bogus refund on account of input tax credit. During the assessment period 2011-12, this dealer fraudulently obtained refund of ₹29,29,035/- by using false and fabricated documents, including sale invoices of cigarettes regarding interstate sales to Rajasthan, VAT D-3 forms showing the sale of cement/tiles, and 'C' forms bearing particular serial numbers. These refunds were obtained by using the specified C forms procured from the dealers of Rajasthan, who used to deal in the trading of tax-free commodities, i.e., khal, binola, etc., claiming interstate sales of cigarettes against the said C forms. It was further found that the dealer used forged and false documents of sale (as mentioned above) and obtained the refund without actual movements of goods during the course of interstate sale.

(ii) During the course of the investigation, accused Mahesh Kumar @ Mahesh Bansal *(petitioner in CRM-M-56316-2023)* was arrested being the commission agent. It was further found that assessment for the year 2011-12 in respect of the firm in question was done by Sh. D.P. Beniwal, the then Excise and Taxation Officer, whereas final assessment order was passed by Ashok Sukhija *(petitioner in CRM-M-52902-2023)*. The refund of ₹29,29,359/- was finally sanctioned by the then Dy. Excise and Taxation Officer, Sirsa, namely, Sh. Gopi Chand Chaudhary.

<u>Contention in CRM-M-56316-2023</u>

3. Contention raised by ld. counsel appearing for petitioner Mahesh Kumar @ Mahesh Bansal is that said petitioner is just a commission agent, who during the course of his business transactions, erroneously contravened the provisions of Haryana Value Added Tax Act, 2003 [for short 'the Act'] and for such violation, the FIR was initially registered against Madan Lal, the proprietor of M/s J.C. Enterprises Ltd.; that final report under Section 173 CrPC has already been presented in the Court after conclusion of investigation and that co-accused Gopi Chand Chaudhary has already been allowed bail by this Court in CRM-M-49998-2023 on 09.10.2023. Still further, it is contended that for violation of the provisions of the Act, the provisions of Indian Penal Code, 1860 [for short 'the IPC'] cannot be attracted. Ld. Counsel referred to ***CRM-M-23662-2016*** decided on 16.05.2023 titled ***Ashwani Kumar*** Vs. ***State of Punjab.*** It is submitted further that CRM-M-39311-2023 has already been filed to quash the FIR on this ground and this Court has granted ad interim relief vide order dated 30.10.2023 (Annexure P5).

<u>Contention in CRM-M-52902-2023</u>

4. On behalf of petitioner-Ashok Sukhija, it is contended by ld. counsel that petitioner had joined his services at Sirsa on 02.07.2013, whereas the case in hand pertains to refund for the year 2011-12. It is Sh. D.P. Beniwal, the then Excise and Taxation Officer, who was responsible for conducting the physical verification of the firm, examine the returns and verify documents of the firm. It is said D.P. Beniwal, who had conducted the necessary verification and that petitioner had simply passed the final

assessment order on the basis of assessment done and the refund order issued by D.P. Beniwal, and in this way, petitioner was not concerned in any way with the allegations made in the FIR.

5. (i) Apart from above, ld. counsel for both the petitioners, have drawn attention towards the fact that loss to the State exchequer to the tune of ₹29,29,359/- had come to the notice of the respondent/State only on 11.11.2014, when the revision order was passed, as is evident from the contents of the FIR itself. It is more than 5 years from the date of that final order in the revision, that letter was sent to the Superintendent of Police, Sirsa to register the case and another approximately about one year, the FIR has been lodged on 24.10.2020 and in this way, there is an unexplained delay of more than 8 years from the date of alleged commission of the offence.

(ii) Ld. counsels further contend that entire case is dependent upon documentary evidence; that investigation already stands concluded and there is no prospect of any of the petitioners absconding from justice and so, they be allowed regular bail, inasmuch as co-accused Gopi Chand Chaudhary has already been allowed bail by this Court.

6. Opposing the bail petitions, ld. State counsel contends that petitioners committed economic offences causing loss to the State exchequer to the tune of more than ₹29 lakhs; that though the allegations make out violation of the provisions of the Act, but at the same time, there is nothing which precluded the police to investigate a crime under the provisions of IPC, in case allegations leveled in the FIR make out the commission of offences under the IPC. Ld. State counsel contends that

fraud and fabrication of documents on the part of petitioners is writ large, as they are involved in evading of VAT by claiming input tax credit on the basis of forged documents. Prayer is made for rejecting both the petitions.

7. I have considered submissions of both the sides and have appraised the record carefully.

8. A Co-ordinate Bench of this Court in ***CRM-M-23662-2016*** decided on 16.05.2023 titled ***Ashwani Kumar*** Vs. ***State of Punjab*** examined the provisions of Sections 57 & 58 of the Punjab Value Added Tax Act, 2005 ['for short 'the 2005 Act'], providing for penalty for failure to issue invoices and use of false invoices and observed that allegations of the FIR are squarely covered under the provisions of Sections 57 & 58 of the 2005 Act. It was further observed that the 2005 Act is a complete Code in itself and there is no provision provided in the 2005 Act for registration of the FIR. It was further observed that the 2005 Act only provided for imposition of penalty in case there is any contravention of its provisions and since the 2005 Act is a special law, principle of *generalia specialibus non derogant* would apply, meaning thereby it would operate in exclusion to the general law i.e., the IPC. While holding so, the Court relied upon ***Pritpal Singh Vs. State of Punjab [CRM-M-26116-2010 decided on 05.03.2012]***, which in turn had relied upon a judgment of Hon'ble Supreme Court rendered in ***Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh and another, 2005(4) RCR (Criminal) 855***, holding that provisions of the Act are sufficient and equipped to deal with the matter, where an attempt is made to evade the Tax and the registration of FIR in such like matters is totally an abuse of the process of law.

9. However, this Court notices that in the absence of factual matrix in ***Ashwani Kumar's case (Supra), Pritpal Singh's case (Supra) and Dilawar Singh's case (Supra)***, it is not possible to comment as to whether in those cases also, there were allegations regarding bogus refund of input tax credit based on false and fabricated documents. In these circumstances, it will be a debatable issue as to whether the provisions of IPC shall be applicable to the present case or not.

10. At the same time, it is not disputed even by the ld. State counsel that FIR pertains to the bogus refund of input tax credit in respect of Assessment Year 2011-12, in which the alleged loss of ₹29,29,359/- to the State exchequer was finalized at least on 11.11.2014 in revision order, as is mentioned in the FIR itself. No explanation is given in the FIR about the delay of more than 5 years so as to write a letter to the Superintendent of Police, Sirsa on 11.12.2019 to take action against the culprits and then another approximately one year for getting the FIR registered on 24.10.2020.

11. Apart from this unexplained huge delay, the case is mostly based upon documentary evidence. Investigation is already complete. Challan already stands presented before the Court concerned. Co-accused Gopi Chand Chaudhary, the then Excise and Taxation Commissioner, has already been allowed bail by a Coordinate Bench of this Court vide order dated 09.10.2023 passed in CRM-M-49998-2023. As per the status report, even the charges are yet to be framed. Mahesh Kumar @ Mahesh Bansal *(petitioner in CRM-M-56316-2023)* is in custody ever-since 01.05.2023 i.e., for the last more than 7 months; whereas Ashok Sukhija *(petitioner in*

CRM-M-52902-2023) is in custody since 31.05.2023 i.e., for the last more than 6 months. Trial may take time to conclude.

12. In view of all the aforesaid circumstances, no purpose shall be served by keeping the petitioners detained, particularly when no apprehension has been expressed by ld. State counsel that if released on bail, petitioners may abscond from justice.

13. Having regard to all the facts and circumstances as noted above, but without commenting anything further on merits of the case, petitioners are admitted to regular bail on their furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned, by observing usual terms and conditions.

Accordingly, both the petitions are allowed.

Pending application(s), if any, shall stands disposed of.

A photocopy of this order be placed on the file of another connected case.

19.12.2023 **(DEEPAK GUPTA)**
Vivek **JUDGE**

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***No***